IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/88521/2014

[Arising out of Order-in-Appeal No: 535/PD/14 dated 23rd April 2014passed by the Commissioner of Central Excise & Service Tax (Appeals - IV), Mumbai – I.]

Remi Elktrotechnik Limited …***Appellant***

versus

Commissioner of Central Excise
Thane – II ***…Respondent***

Appearance:

Shri D.H. Nadkarni, Advocate for the appellant

Ms. Trupti Chauhan, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 28/07/2017
Date of decision: 28/07/2017

ORDER NO: A/ 92337 / 2017

Appeal of M/s Remi Elektrotechnik Limited pertains to the period between 2007-08 and 2008-09 during which 'electric motors' manufactured at their factory and cleared on payment of duty and, at times, returned for effecting certain repairs. The appellant, by resort to rule 16 of Central Excise Rules, 2002, availed CENVAT credit equivalent to the amount of duty liability that was discharged at the time of clearance of the goods and, upon clearance again after effecting repairs clears, duty was paid once again. The CENVAT credit was availed on the strength of the photocopies of the original invoices issued. It is this CENVAT credit of ₹ 2,14,076/- that was ordered to be recovered by the original authority, along with interest thereon, and penalty of like amount imposed under section 11A of Central Excise Act, 1944. The Commissioner of Central Excise (Appeals – IV), Mumbai has *vide* order-in-appeal no. 535/PD/14 dated 23rd April 2014 upheld the order of the original authority.

2. Heard Learned Counsel for appellant and Learned Authorised Representative.

3. While admitting that some of their customers are not registered with Central Excise department, it is contended by the appellant that they were precluded from returning goods under any of the prescribed documents. Learned Counsel draws attention to the findings in the impugned order which have relied on the assumption that appellant has failed to render explanation for the absence of documents on receipt of the goods and also of the entitlement to take CENVAT credit when the goods are received for repair.

4. Rule 16(3) of CENVAT Credit Rules, 2004 exist specifically for the handling of such situation. It is an accepted fact of manufacture that the producer is also responsible for repairs and reconditioning under warranty. The clearance of goods on payment of duty in the first instance would not, of itself, entitle them to duty free clearance on the second instance after repair/recondition. It is with such intent, and in order to eliminate the subjecting of double taxation that rule 16(3) of Central Excise Rules, 2002 provided for reversal of duty payment through the mechanism of fresh availment to be reversed once again upon second clearance of these goods following repairs/recondition. This has apparently not been appreciated by the two lower authorities. Understandably, the verification of receipt of the goods that had originally been cleared on payment of duty as well as subsequent discharge of duty liability after repairs/recondition needs ascertainment and confirmation. In order to enable that exercise, the impugned order is set aside and the matter remanded back to the original authority for the purpose.

5. The appeal is therefore allowed by way of remand.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*